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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,735	08/25/2006	Daiju Yuki	2006_1393A	8731
513 7590 02/25/2010 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503			EXAMINER MARX, IRENE	
			ART UNIT 1651	PAPER NUMBER
			NOTIFICATION DATE 02/25/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com
coa@wenderoth.com

Office Action Summary	Application No. 10/590,735	Applicant(s) YUKI ET AL.	
	Examiner Irene Marx	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/25/06, 12/4/06, 3/15/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The application should be reviewed for errors.

To facilitate processing of papers at the U.S. Patent and Trademark Office, it is recommended that the Application Serial Number be inserted on every page of claims and/or of amendments filed.

Applicant's election without traverse electing to prosecute the invention of Group II, claims 6-8 on 12/18/09 is acknowledged.

Claims 6-8 are being considered on the merits. Claims 1-5 and 9 are withdrawn from consideration as directed to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kamata *et al.*, JP 08-175919, or Takahashi *et al.*, JP 02-209803, or Murayama *et al.*, JP-2003-289854, or Fushimi *et al.*, JP 05-051305, or Minato *et al.*, JP-2001-346407, or Inami *et al.*, JP 2003-277210, or Tateishi, H., JP 2003-089612, or Shoda *et al.* JP-06-133763, or Kinootka *et al.*, JP-05-091869, of record.

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

The references teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. See, e.g., Abstract.

Therefore, the invention is anticipated by the reference.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Phae *et al.*, of record

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

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The reference teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. The plants treated include tomato, belonging to *Solanaceae*. See, e.g., Table 1.

Therefore, the invention is anticipated by the reference.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bergstrom et al, 2003/0082792) of record

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

The reference teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. The plants treated include maize and wheat, belonging to *Graminacea*. See, e.g., examples 4-7

Therefore, the invention is anticipated by the reference.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rossall et al., U.S. Patent No. 5,344,647 of record

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

The reference teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. The plants treated include tomato, belonging to *Solanaceae*. See, e.g., Example 5.

Therefore, the invention is anticipated by the reference.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Neyra et al., U.S. Patent No. 5,589,381.

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

The reference teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. The plants treated include tomato, belonging to *Solanaceae*. See, e.g. 14, lines 18-38.

Therefore, the invention is anticipated by the reference.

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Claims 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marrone *et al.*, U.S. Patent No. 6,004,774

The claims are directed to a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant.

The reference teaches a method of controlling bacteria, fungi or viruses in plants by applying *Bacillus* to the plant. The plants treated include strawberries and tomato, belonging to *Rosacea* and *Solanaceae*. (See, e.g., col. 12, lines 1-39, Example 12.

Therefore, the invention is anticipated by the reference.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/
Primary Examiner
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